

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LARRY KERMIT RANKIN,)	Case No. 3:21-cv-215
)	
Plaintiff,)	JUDGE KIM R. GIBSON
)	
v.)	
)	
JOHN WETZEL; FACILITY MANAGER)	
ERIC TICE; LIEUTENANT MICHAEL)	
CINKO; CO2 SERGEANT A. BORING;)	
CO1 T. WALKER; <i>and</i> R.E. SHAFFER,)	
)	
Defendants.)	

MEMORANDUM ORDER

This matter is before Magistrate Judge Maureen P. Kelly for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

On March 4, 2022, pro se plaintiff Larry Rankin (“Plaintiff”) filed a complaint against defendants John Wetzel, Michael Cinko, A. Boring, T. Walker, and R.E. Shaffer (“Defendants”) while incarcerated at Pennsylvania’s State Correctional Institution at Somerset (“SCI Somerset”). (ECF No. 8). On June 6, 2022, Defendants filed a motion to dismiss Plaintiff’s complaint for failure to state a claim. (ECF No. 15).

On October 19, 2022, Magistrate Judge Kelly filed a Report & Recommendation (“R&R”) recommending that the Court partially grant and partially deny Defendants’ motion to dismiss. (ECF No. 33). In the R&R, the Magistrate Judge notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.D.2, they would have fourteen days to file written objections to the R&R. (*Id.* at 10). Because Plaintiff was a non-registered ECF user, the Court originally set his filing deadline for November 7, 2022. (*See generally id.*). However, for the reasons provided in

this Court's order from March 9, 2023, the Court moved this deadline to March 31, 2023. (ECF No. 54).

Neither party filed written objections, timely or otherwise. Therefore, the Court need give only "reasoned consideration" to the R&R by "afford[ing] some level of review to dispositive legal issues raised by the report[.]" *EEOC v. City of Long Branch*, 866 F.3d 93, 99–100 (3d Cir. 2017). Upon reasoned consideration of Magistrate Judge Kelly's R&R at ECF No. 33, the following order is entered:

NOW, this 31st day of May, 2023, **IT IS HEREBY ORDERED** that Magistrate Judge Kelly's R&R at ECF No. 33 is **ADOPTED** as the Opinion of the Court for its reasoning and conclusion.

IT IS FURTHER ORDERED that Defendants' motion to dismiss at ECF No. 15 is **GRANTED IN PART** and **DENIED IN PART**. Specifically, the motion is **GRANTED** as to all claims against Defendants Wetzel, Tice, and Shaffer; it is **DENIED** as to all claims against Defendants Cinko, Boring, and Walker.

IT IS FURTHER ORDERED that Plaintiff's complaint at ECF No. 8 is **DISMISSED WITHOUT PREJUDICE** as to the claims asserted against Defendants Wetzel, Tice, and Shaffer. Plaintiff shall have thirty (30) days from the date of this memorandum order to file an amended complaint addressing the deficiencies identified in Magistrate Judge Kelly's R&R.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson". The signature is written in a cursive, flowing style. The first name "Kim" is written with a large, stylized "K". The middle initial "R." is written with a large "R" followed by a period. The last name "Gibson" is written with a large "G" and a stylized "i". The signature is positioned above a horizontal line.

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE